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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/533,967

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Gunter Julius Pelz

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07/21/2009

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MILWAUKEE, WI 53202-4497

EXAMINER

REDMAN, JERRY E

ART UNIT

PAPER NUMBER

3634

MAIL DATE

DELIVERY MODE

07/21/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/533,967

Applicant(s)

PELZ, GUNTER JULIUS

Examiner

Jerry Redman

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-8 and 10-16 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The status of the claims is as follows:

Claim 9 has been cancelled; and

Claims 1-8 and 10-16 are herein address below.

Claims 2, 7, 8, and 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 2, 7, 8, and 13-16, the applicant positively recites either the door and/or the movement of the door between the open and closed position. As stated in the applicant's arguments, the Applicant is merely claiming the apparatus per se and not in combination with the door yet the applicant still positively recites the door.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6, 10, and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Matsuki et al. (5,642,619). Matsuki et al. (5,642,619) disclose an apparatus (100) comprising a fluid cylinder and piston (14 and 15), a supply of gas generating chemicals (32), an explosive primer (33) being armed and unarmed via pin (24b, i.e., claim 11) moved between first and second positions, and an initiator (24b).

[note: the applicant has noted that ONLY the apparatus per se is being claimed and not in combination with the door]

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

As best understood (since the applicant states that the combination is NOT being claimed, yet the applicant still positively recites the combination), claims 2, 7, 8, and 12-16 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuki et al. (5,642,619) in view of Frey et al. (3,802,123) or Frey et al. ('123 in view of Matsuki et al. (5,642,619). All of the elements of the instant invention are discussed in detail above except providing the apparatus attached to a door or a door connected to an apparatus having gas generating chemicals. Frey et al. ('123) disclose an emergency movement of a door connected via linkages (column 3, lines 52-57, also to that any attachments via the piston/cylinder must be attached to the door via "linkages" in order for the door to be moved). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Matsuki et al. (5,642,619) with a door connected via linkages as taught by Frey et al. ('123) since to move a door between an open and closed position in an emergency situation allows safe passage via the opening closed by the door. It would have been further obvious to one of ordinary skill in the art at the time of the invention to provide the door assembly of Frey et al. ('123) with a gas cylinder

having gas generating chemicals set off via an initiator as taught by Matsuki et al. (5,642,619) since a gas operated cylinder allows the door to be opened more quickly in an emergency situation.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Several patents, which disclose "gas generating chemicals" similar to that of the applicant's invention, have been cited..

Depending on the applicant's amendments, claims 4 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The applicant's arguments have been considered but are not deemed persuasive. The applicant argues that only the apparatus per se is being claimed and not the combination per se yet the applicant still positively recites the door and its movement within the dependent claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Redman whose telephone number is 571-272-6835. The examiner can normally be reached on M-F from 8 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Mitchell, can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jerry Redman
Primary Examiner
Art Unit 3634

/Jerry Redman/
Primary Examiner, Art Unit 3634